

IN RE: PETITION FOR ZONING VARIANCE \* BEFORE THE  
80 ft. W of intersection of \* ZONING COMMISSIONER  
northernmost & easternmost \*  
R/W of Sandy Plains Road \* OF BALTIMORE COUNTY  
8618 Sandy Plains Road \*  
12th Election District \* Case No. 93 144-A  
7th Councilmanic \*  
Irving Russell Bauer, et ux \*  
Petitioners \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Variance for that property located at 8618 Sandy Plains Road in the Inverness Subdivision of Baltimore County. The Petition seeks relief to legitimize two existing conditions which are the present subject of a zoning violation case. First, the Petitioners seek approval of the location of an existing accessory structure (shed). This shed is situated in the side yard of the property, in lieu of the required rear yard, and the Petitioners allege that same is 0 ft. from the side yard property line, in lieu of the required 2-1/2 ft. The location and setbacks of the accessory structure are governed by Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.). Secondly, the Petitioners seek relief from Section 415.A of the B.C.Z.R. to permit three recreational vehicles on the property in the lieu of the permitted one. The relief requested is more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Variance.

The Petitioners/property owners, Irving R. Bauer and Joyce Louise Bauer, appeared and testified. Appearing in opposition of the Petition was the adjacent property owner, Mary S. Ellendt of 8620 Sandy Plains Road.

Evidence and testimony presented was that the subject site is a water front property on Chink Creek in the Inverness Subdivision. The property, known as 8618 Sandy Plains Road, is zoned D.R. 3.5 and is approximately 9,856 sq. ft. in area. It is improved by a one story framed dwelling which is occupied by Mr. and Mrs. Bauer.

The pending Petition relates to an accessory structure (shed) which is located in the side yard of the property. This long, yet narrow, shed was constructed approximately ten years ago, according to the testimony of Mr. Bauer. He indicated that it was placed in its current location partly based upon a request of Mrs. Squires, the then owner of the adjoining lot now occupied by Mrs. Ellendt. The shed provides needed storage space for the Bauers and is located approximately 3 ft. from the side of their dwelling. Mr. Bauer testified that the storage provided by the shed is necessary and that to relocate same would be costly and inconvenient. Particularly in view of the fact that the shed has been in place for many years, the Petitioners request permission to legitimize its present location.

Although Mrs. Ellendt testified that she is concerned about the side yard setback waiver, she particularly emphasized her objections to a possible infringement of the shed onto her property. In this respect, she submitted a survey which indicates that the shed is not placed parallel with the property line and actually infringes onto her property at its northeast corner. She objects to this infringement.

As I stated at the hearing, the maximum relief which I may grant is to allow a 0 ft. side yard setback. That is, I can waive the side yard setback requirement and permit the shed to be placed abutting the property line. However, I do not have authority to decide on such matters of adverse possession and property rights. Therefore, any relief granted with-

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in this Order will permit the shed to be located only on the property line and cannot be construed as permission to permit the shed to extend over the property line onto the Ellendt property. In this respect, this property line dispute between these neighbors must be decided by the proper court of competent jurisdiction.

As with any variance, the Petitioner must demonstrate that relief should be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

As it relates to the accessory structure, I am persuaded that the Petitioners have met their burden. It is clear from the testimony that if the variance is granted, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship will result

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if the variance is not granted. In this respect, I am particularly persuaded by the testimony of Mr. Bauer that the shed has been at its present location for many years and to relocate same would impose an undue burden upon the Petitioners. Also, the failing health of the Petitioners and the need for the storage space provided by the shed are factors justifying the variance. To require the Petitioners to move the shed elsewhere on the lot might further endanger their health. For these reasons, it has been established that special circumstances or conditions exist that are peculiar to this site and that the requirements from which the Petitioners seek relief will unduly restrict the use of the land. Further, the variance requested will not cause any injury to the public health, safety and general welfare of the locale and will be in strict harmony with the spirit and intent of the B.C.Z.R. Thus, relief from the provisions of Section 400.1 of the B.C.Z.R. as they relate to the placement and side yard setbacks of the accessory structure will be granted.

As noted above, the second variance relates to Section 415.A of the B.C.Z.R. and the number of recreational vehicles on site. Under the regulation, one recreational vehicle is permitted, however, Mr. Bauer testified that he maintains two boats and a trailer on the property. Apparently, the trailer and one of the boats is owned by the Petitioners and the other boat is owned by the son. The Petitioners presented little testimony in support of this variance, other than to note that the recreational vehicles have been on site for many years, and they are owned by them or their family. To relocate same would result in great expense and inconvenience. Under the circumstances, I am persuaded to grant this variance, restricting same to these recreational vehicles. That is, the Petitioners may keep the three recreational vehicles presently stored on the property,

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but they may not be replaced or substituted. If said vehicles are sold or no longer owned by the Petitioners, the authority granted by this variance shall lapse. It is the intent of this approval to allow the current vehicles to remain, in view of the Petitioners' long time ownership and use of this property, but not to permit subsequent owners or other vehicles to be stored on the property.

This property lies within close proximity to the Chesapeake Bay and is, therefore, subject to the Chesapeake Bay Critical Area legislation found within Section 500.14 of the B.C.Z.R.

In accordance with Section 500.14 of the B.C.Z.R., the Director of the Department of Environmental Protection and Resource Management must submit recommendations which describe what steps the Petitioners must take to insure that the relief requested complies with the following Chesapeake Bay Critical Areas requirements to:

- 1) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- 2) Conserve fish, wildlife, and plant habitat; and
- 3) Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

These recommendations have not, as yet, been submitted, as noted in the Zoning Plans Advisory Committee comments from the Department of Environmental Protection and Resource Management (D.E.P.R.M.) dated November 25, 1992. (copy attached hereto). When D.E.P.R.M.'s final comments are completed, they shall be attached hereto and become a permanent part of the decision rendered in this case. There is no evidence in the record

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that the relief requested would adversely affect the health, safety, and/or general welfare of the public provided there is compliance with the requirements of the Department of Environmental Protection and Resource Management.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 11<sup>th</sup> day of January, 1993 that a variance from Section 415.A of the B.C.Z.R. to permit three recreational vehicles in the lieu of the permitted one recreational vehicle, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section 400.1 of the B.C.Z.R. for approval of the placement of an existing accessory structure (shed) to be located in the side yard of the property, in lieu of the required rear yard; and that same be 0 ft. from the side yard property line, in lieu of the required 2-1/2 ft., be and is hereby GRANTED, all subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. The granting of the variance is conditioned upon the Petitioners obtaining confirmation that the subject Petition complies with the Chesapeake Bay Critical Area regulations and obtains approval from the Department of Environmental Protection and Resource Management (D.E.P.R.M.).
3. The granting of the variance from Section 415.A of the B.C.Z.R. shall extend only to the

three recreational vehicles presently on the property and only for so long as same are owned by the Petitioners and their son. If said property and/or vehicles are no longer owned by the Petitioners, the variance granted herein shall lapse. Further, within 30 days from the date of this Order, the Petitioner shall submit a clear photograph of the recreational vehicles so as to document the identity of the vehicles presently on this site.

LES/mnn

*Lawrence E. Schmidt*  
LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

ORDER RECEIVED FOR FILING  
Date 1/16/93  
By Th. Dordt

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Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

January 8, 1993

Mr. and Mrs. Irving R. Bauer  
8618 Sandy Plains Road  
Dundalk, Maryland 21222

RE: Case No. 93-144-A  
Petition for Variance  
8618 Sandy Plains Road

Dear Mr. and Mrs. Bauer:

Enclosed please find the decision rendered in the above captioned case. The Petition for Variance has been granted, with restrictions, in part, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

*Lawrence E. Schmidt*  
LAWRENCE E. SCHMIDT  
Zoning Commissioner

LES:mnn

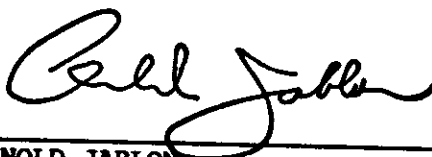
att.  
cc: Mrs. Mary S. Ellendt  
8620 Sandy Plains Road  
Dundalk, Maryland 21222

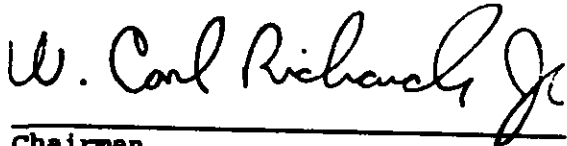
Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204


(410) 887-33

Your petition has been received and accepted for filing this  
27th day of October, 1992.

  
ARNOLD JABLON  
DIRECTOR

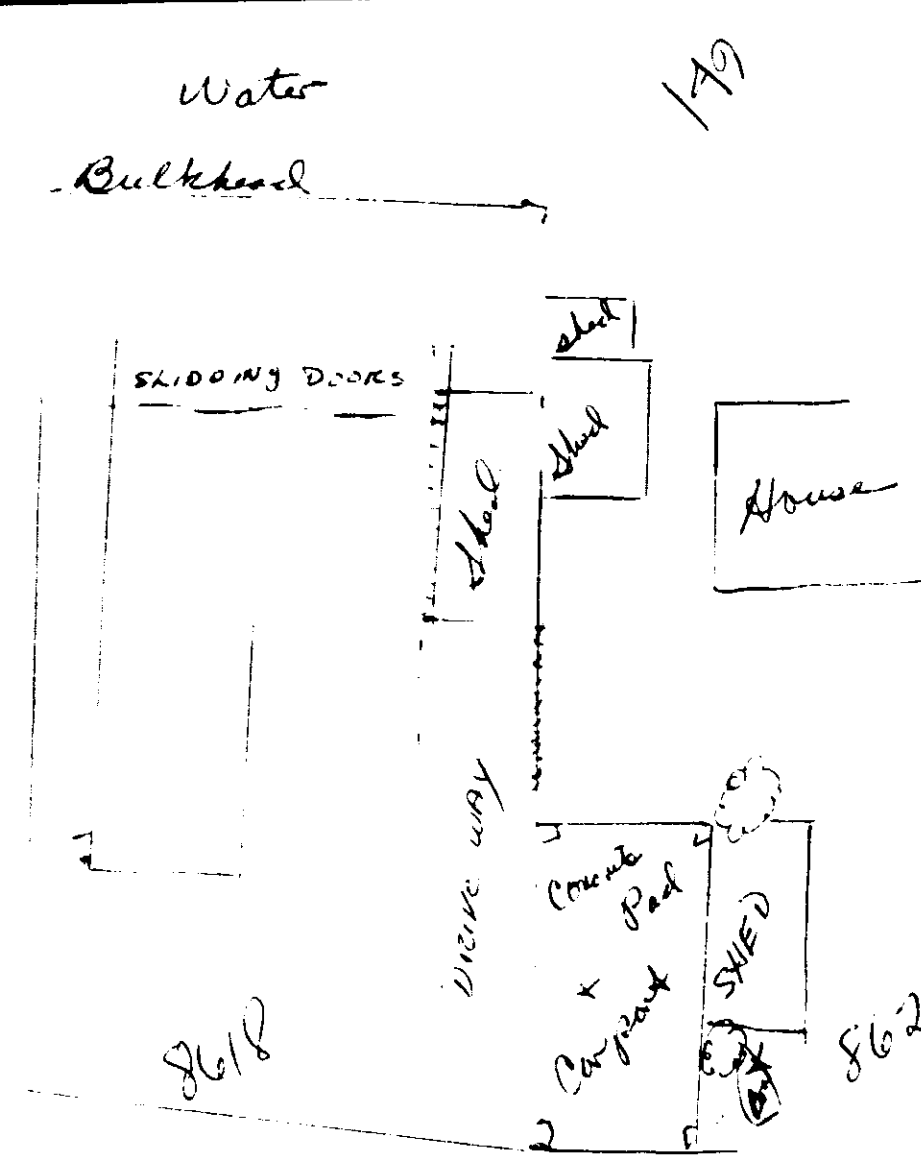
Received By:  
  
W. Carl Richards Jr.  
Chairman,  
Zoning Plans Advisory Committee

Petitioner: Irving Russell Bauer, et ux  
Petitioner's Attorney:

 Printed on Recycled Paper







When shed was built the only place that would not obstruct the square well and not block the view from the house and the swing under the car port was to place our shed up against the house that was supposed to be on the property line until 4 months ago the property line was moved every day. The square well on same line as fence was placed on same line as the car port - I did not know that when she moved the shed and tore down the car port that she had turned the property over to new owners according to County laws (which at that time I was not aware of). The car port would be up against a block wall. We believe that the survey is incorrect and as soon as we can afford it we will have our property resurveyed. It would cost more than shed cost to have it dismantled and thousands of dollars to have it moved by a crane. We are both retired and both live on the same piece of property. Mr. Bauer has not been able to work since he lost his job. They have built a house on raised ground and graded ground for water to run off onto our property. The house foundation was pushed into the ground and the water line.

Placement of shed made a safe place for a ramp for Mrs. Bauer who needs access from wheelchair down and over the foundation in bad weather to get to car. With wheelchair + the 4.5' height ramp is similar and area steps drop + protected.

ALSO A MEMBER OF THE FLORIDA BAR

**BERNARD I. POLLOCK**  
Attorney At Law  
3129 Eastern Avenue  
Baltimore, Maryland 21224-3904  
Telephone (410) 342-6733  
Telefax (410) 342-4146

CERTIFIED MAIL RETURN RECEIPT REQUESTED P 401 874 862

October 1, 1992

Baltimore County, Maryland Zoning Office  
Citation for Civil Zoning Violation  
Room 113  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Attention: L. Wasilewski

Re: Case No.: C-92-1216  
Location: 8618 Sandy Plains Road  
My Client: Paul and Mary Ellendt  
8620 Sandy Plains Road  
Baltimore, Maryland 21222

Dear L. Wasilewski:

Enclosed please find a copy of the correspondence sent to Mr. and Mrs. Bauer, the property owners of 8618 Sandy Plains Road. I am also enclosing a copy of the survey which indicates that the present garage is encroaching upon the property of my clients.

My clients are adamantly opposed to any variance being permitted to Mr. and Mrs. Bauer with regard to this garage on the property. Not only is the garage inappropriate, but it is dilapidated and encroaching upon their property.

If I may be of any further assistance with regard to this matter, please do not hesitate to contact me. *12/1/92 Please Contact*  
*Procy on Paul Ellendt if needed 334-5606 or 388-1765*

Very truly yours,  
*B. Pollock*  
Bernard I. Pollock

BIP/als  
Enclosures  
✓ CC: Mr. Mrs. Paul Ellendt

MICROFILMED

ALSO A MEMBER OF THE FLORIDA BAR

**BERNARD I. POLLOCK**  
Attorney At Law  
3129 Eastern Avenue  
Baltimore, Maryland 21224-3904  
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Telefax (410) 342-4146

CERTIFIED MAIL RETURN RECEIPT REQUESTED P 401 874 861

October 1, 1992

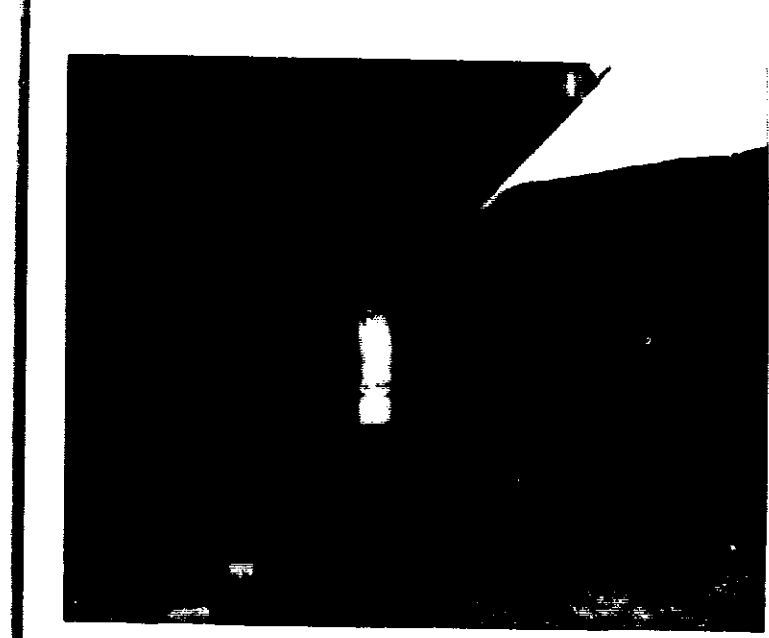
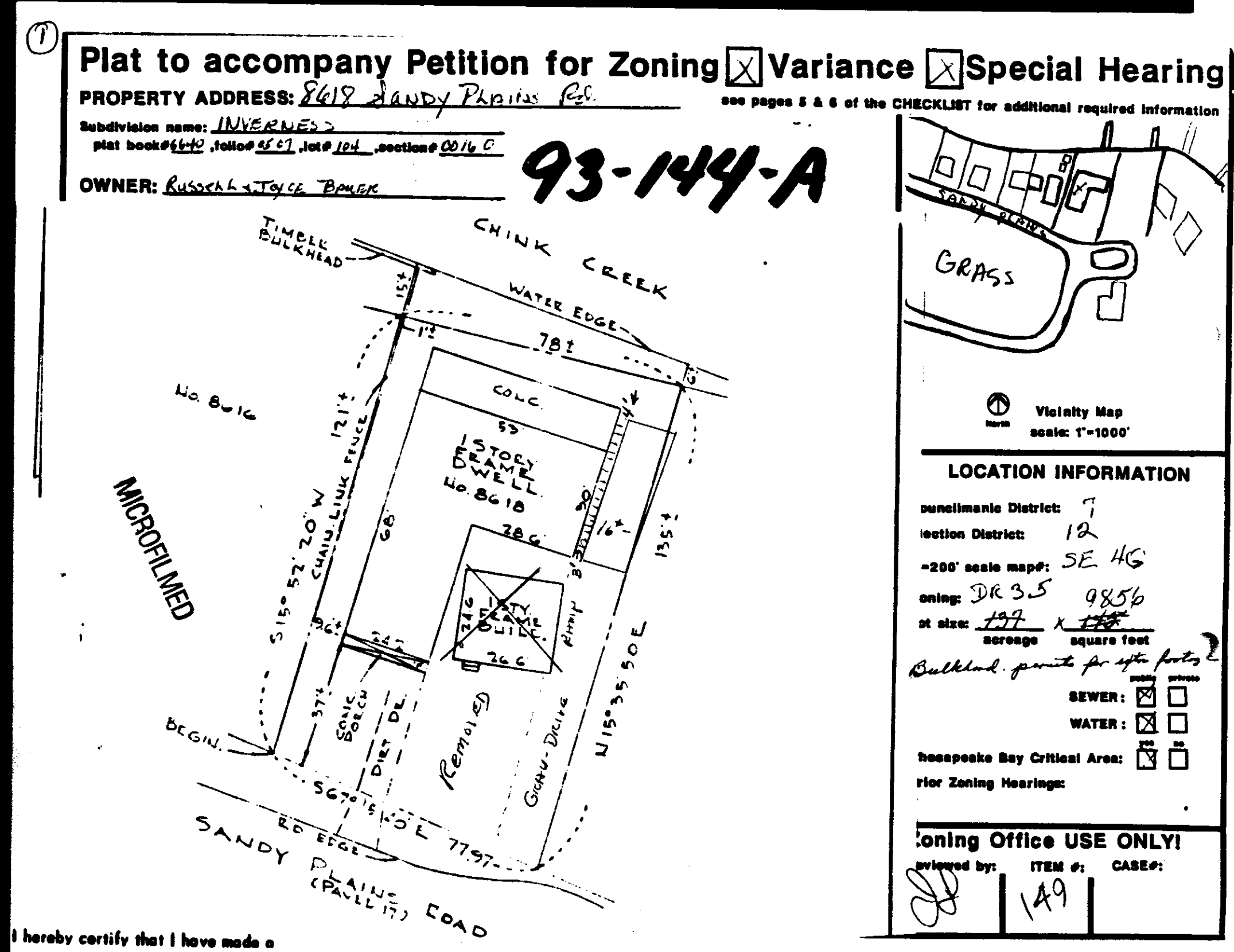
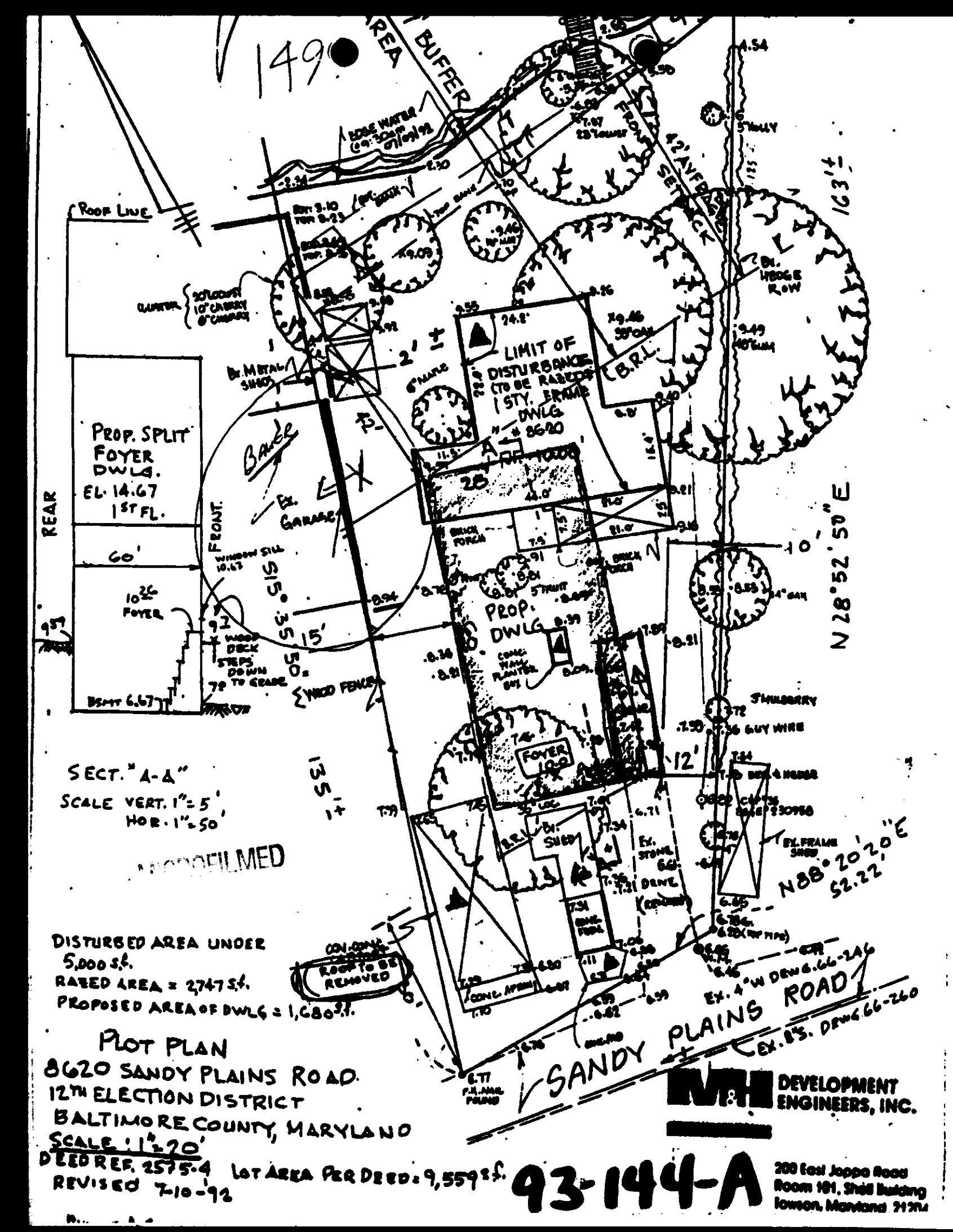
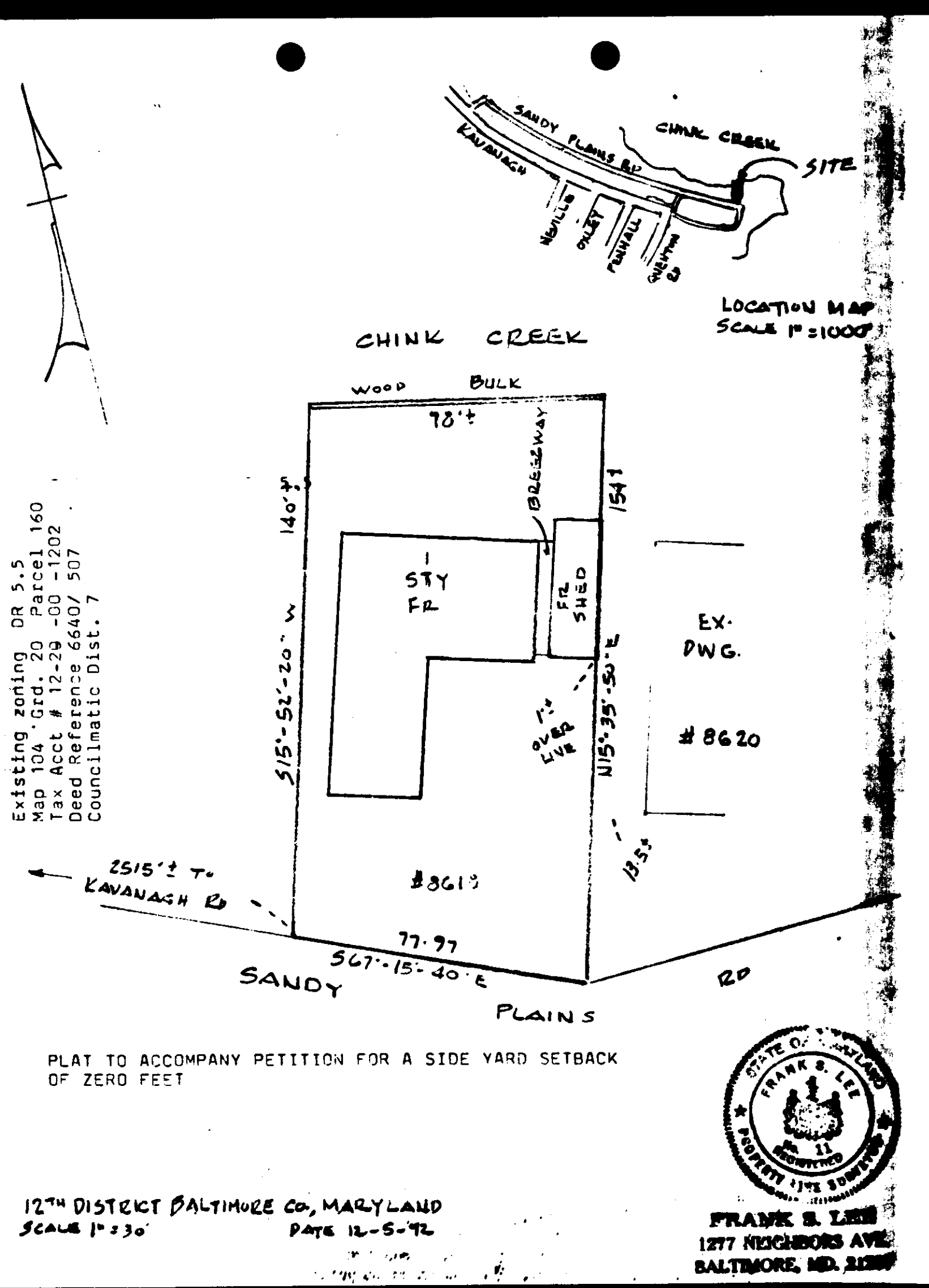
Mr. Mrs. Russell Bauer  
8618 Sandy Plains Road  
Baltimore, Maryland 21222

Re: My Clients: Paul Ellendt and Mary Ellendt  
8620 Sandy Plains Road  
Baltimore, Maryland 21222

Dear Mr. and Mrs. Bauer:

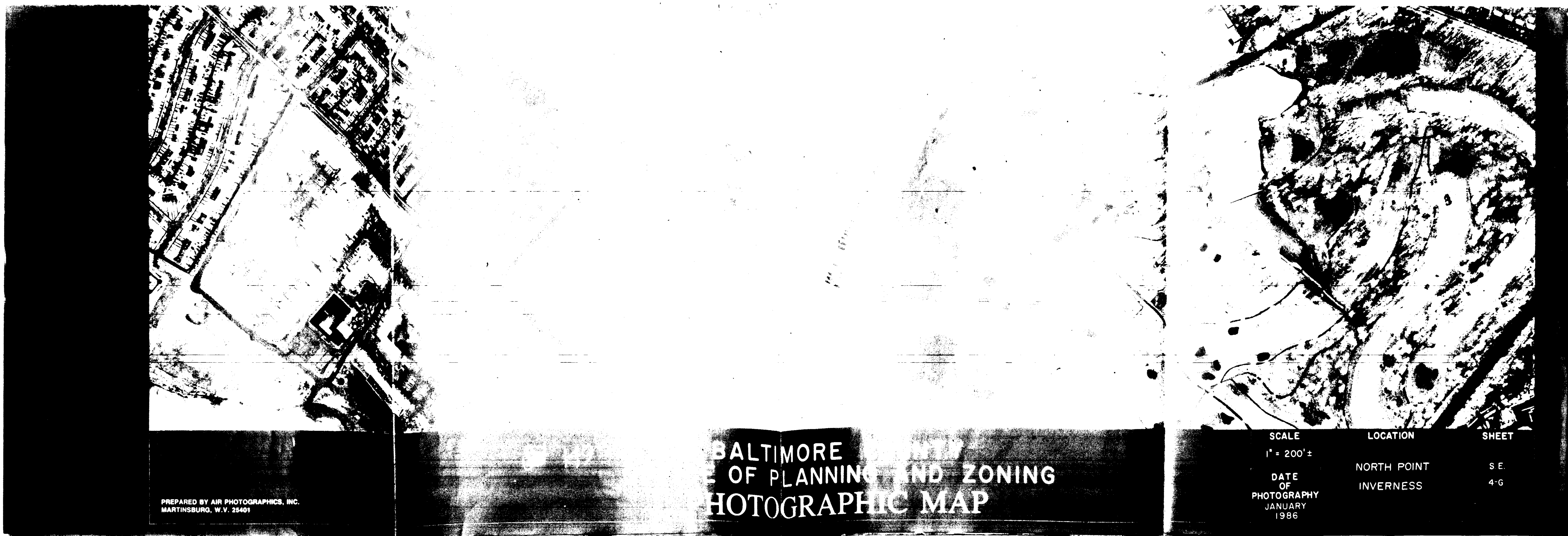
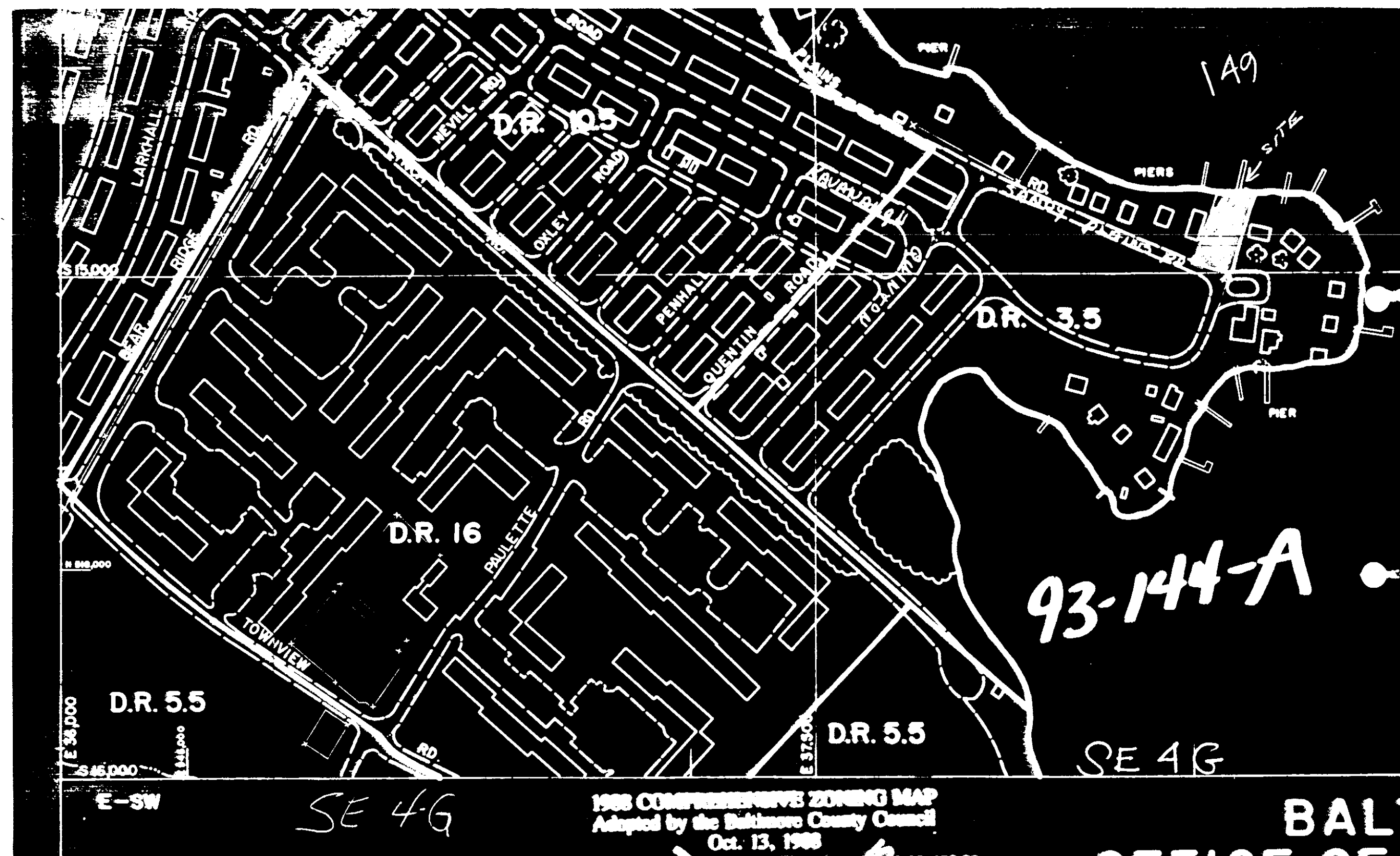
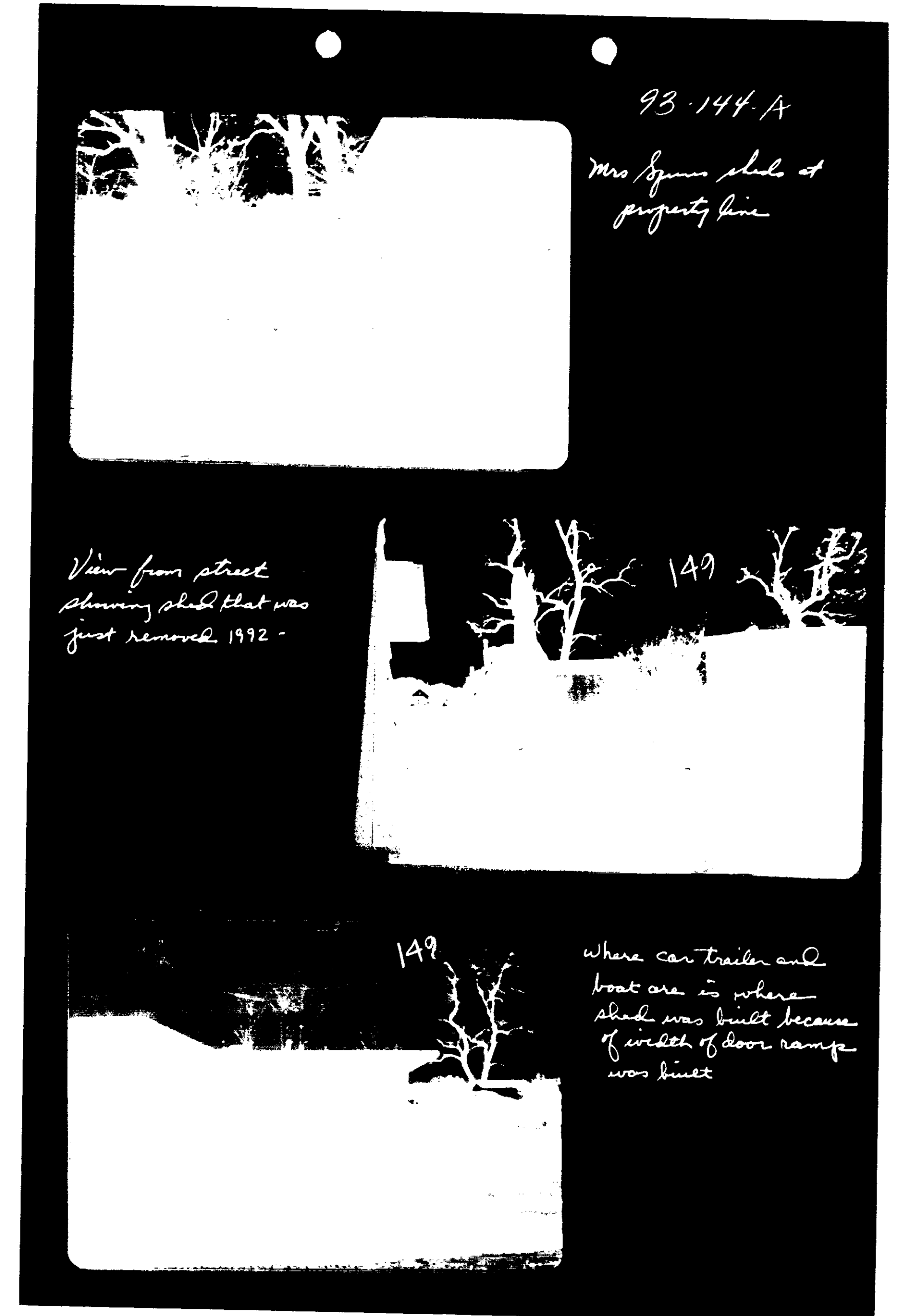
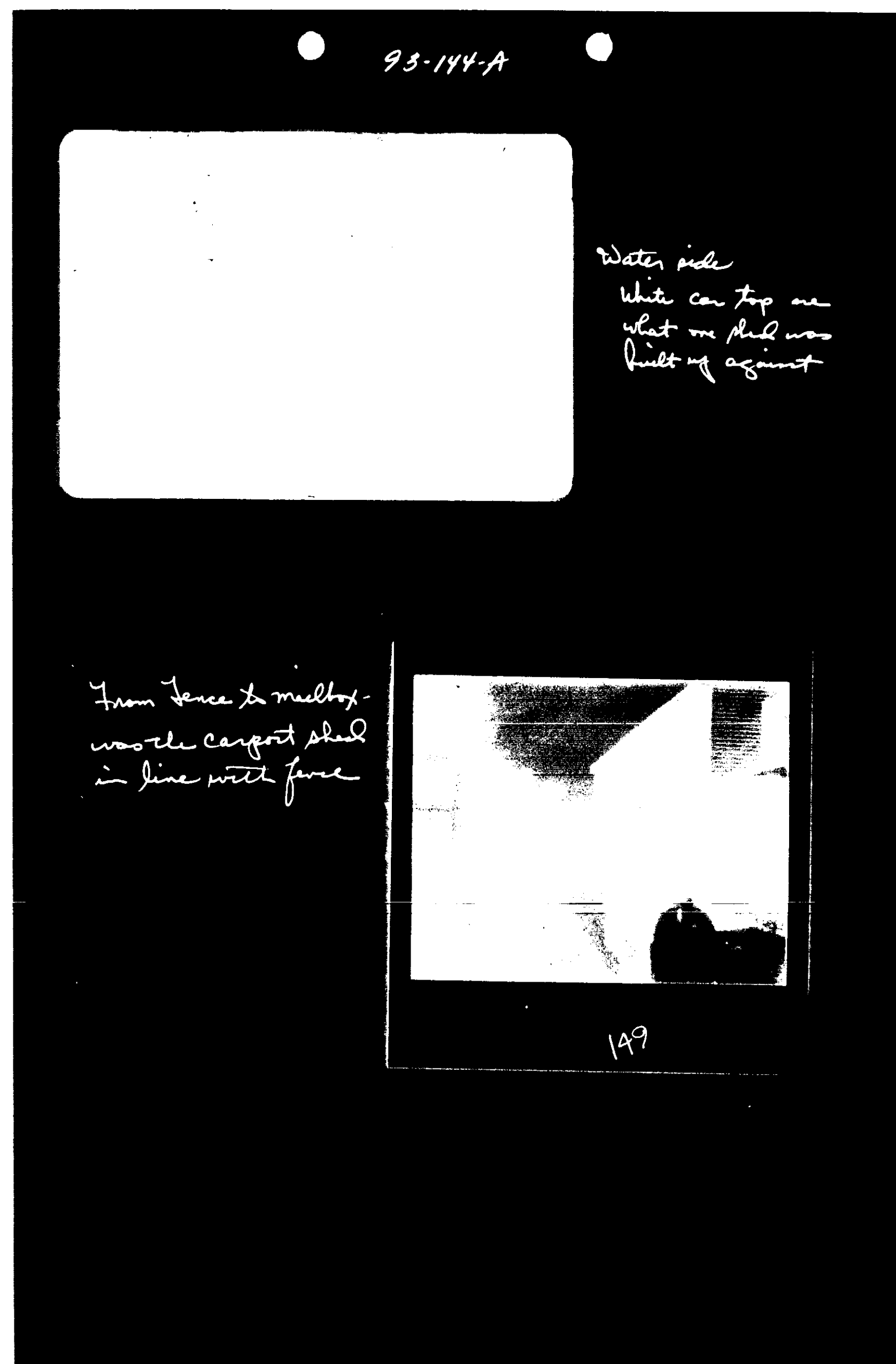
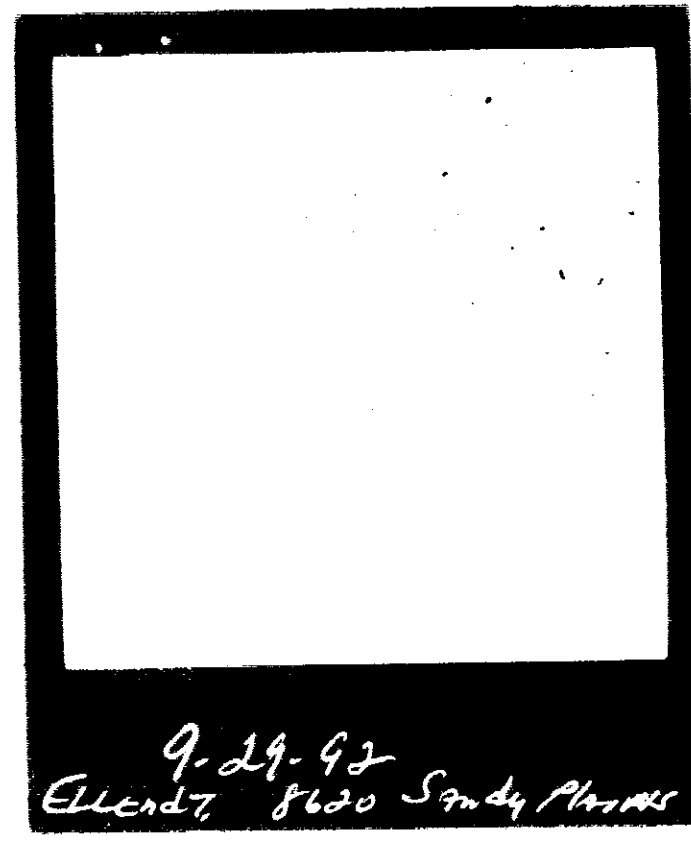
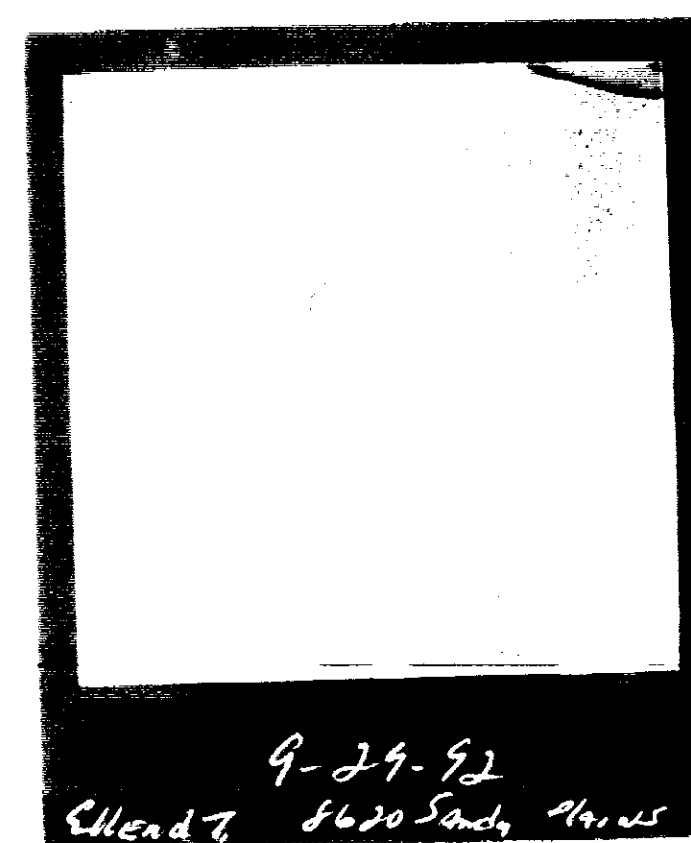
Please be advised that the undersigned has been retained by Mr. and Mrs. Ellendt with regard to their property, 8620 Sandy Plains Road. It has come to my attention that your garage is encroaching upon and over the boundary line of the surveyed lot of 8620 Sandy Plains Road. I am enclosing herewith a photo copy of the survey which indicates the portion of your garage which extends over the boundary line. My clients previously brought to your attention the fact that your property is encroaching upon their land.

Furthermore, it is my understanding that this garage constitutes an improper placement of an accessory structure without a proper variance from Baltimore County. At this time demand is now made upon you to remove this structure or that portion of the structure which encroaches upon my client's property. You are to remove that portion of the garage from their property within the next thirty (30) days. At this time I am in the process of advising the County of this encroachment upon my client's property. Demand is now made upon you to act to rectify this problem in order to avoid any further legal problems in the future. It has been



Garage showing another photo. Note: Carport is on property in order not to block it. Shed was just along our house near water.





# BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING AERIAL PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.  
MARTINSBURG, W.V. 25401

SCALE  
1" = 200' ±  
DATE  
OF  
PHOTOGRAPHY  
JANUARY  
1986

LOCATION  
NORTH POINT  
INVERNESS

SHEET  
S.E.  
4-G